TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1913

No. [redacted]3[redacted]66

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

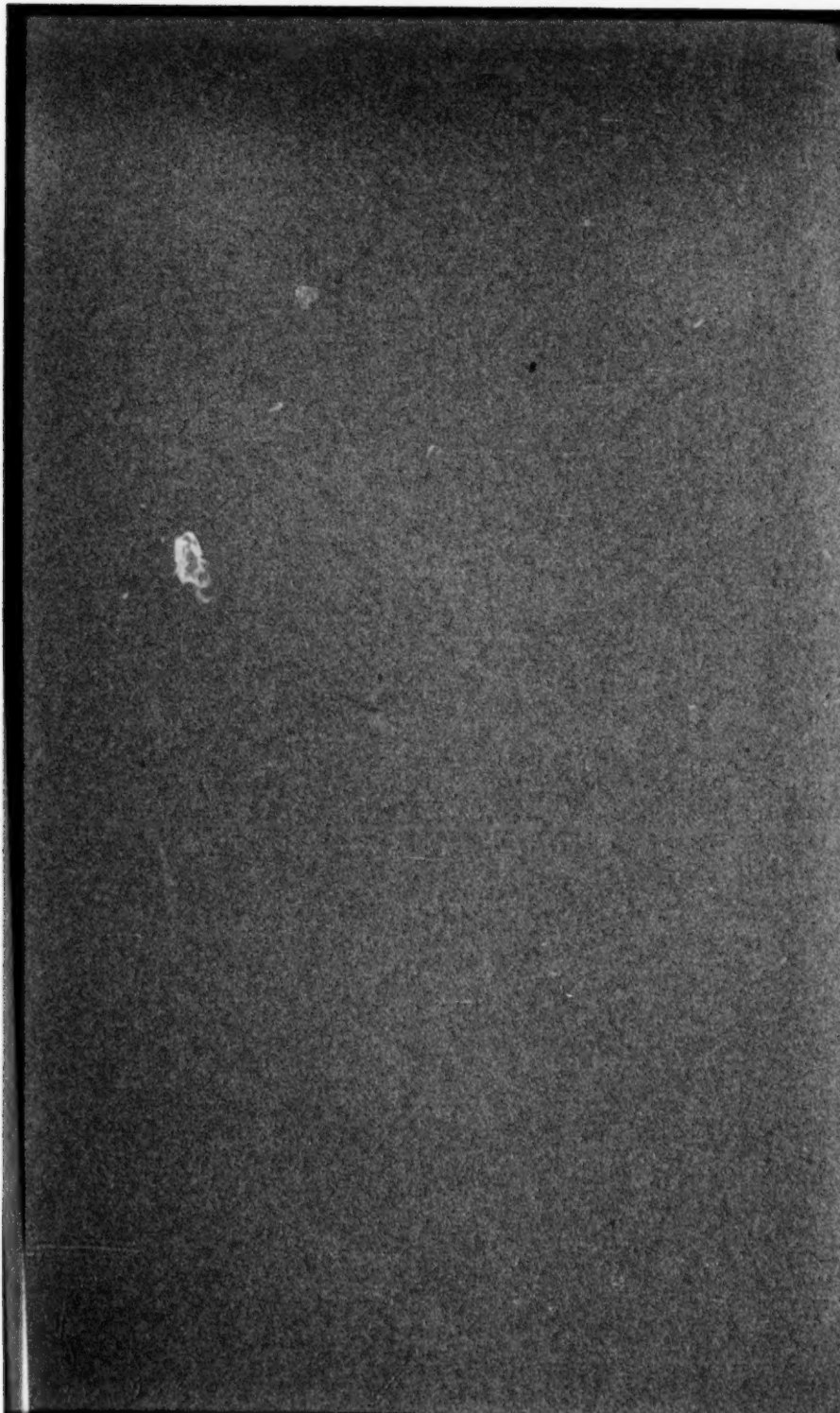
vs.

DICKSEY WILLIAMS AND LUCY WILLIAMS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED MARCH 6, 1914.

(26,370)



(26,370)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 903.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

DICKSEY WILLIAMS AND LUCY WILLIAMS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 8, 1918.

1 Pleas Before the Honorable G. R. Haynie, Judge of the Eighth Judicial Circuit of Arkansas, in the Matter of Lucy Williams and Dicksey Williams, Plaintiffs, vs. St. L., I. M. & S. Ry. Co., Defendant, Consolidated Cause No. 1936, Had on January 25, 1917.

2 In the Clark Circuit Court.

DICKSEY WILLIAMS, Plaintiff,

v.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Defendant.

Complaint at Law.

For cause of action plaintiff states that she is a citizen and resident of Clark County, Arkansas. That the defendant is a railroad corporation, owning and operating a line of railroad in and across the counties of Faulkner, Clark and other counties of the State of Arkansas, and upon the date hereinafter alleged, was engaged in the transportation of passengers for hire over its said line of railroad in said counties of Faulkner, Clark and other counties in the State of Arkansas. That on the 4th day of June, 1915, the defendant kept and maintained at Conway in Faulkner County, Arkansas, a regular passenger depot and ticket office, where regular passenger tickets were sold by the defendant's regular authorized ticket agent; that on the said 4th day of June, 1915, plaintiff called upon the defendant's said ticket agent at said town of Conway, in said county of Faulkner, and demanded a ticket of said agent, authorizing her transportation over the defendant's line of railroad from the said town of Conway in said county of Faulkner, State of Arkansas, to the town of Whelen Springs, Arkansas; That the defendant's said agent at the said
3 town of Conway in said county of Faulkner, State of Arkansas, wilfully, knowingly and wrongfully charged and demanded and received of and from plaintiff the sum of $4.20, for a regular passenger ticket for her transportation, upon the defendant's passenger train over its said line of railroad, from the said town of Conway, Faulkner county, Arkansas, a distance of one hundred and eighteen (118) miles; that defendant's said line of railroad over which plaintiff was to be transported, upon said ticket was greatly in excess of seventy five miles in length.

That the sum of $3.54 was on said date the maximum passenger fare which defendant's said agent was then and there authorized by law to charge; which fact was then and there well known to defendant's said agent.

Plaintiff states that she is entitled to recover of and from the defendant the sum of Sixty-six cents, same being the amount of the over-charge upon said ticket, purchased of and from said defendant's said agent at said town of Conway, in Faulkner county, Arkansas, upon which the plaintiff was to be transported from the said town of Conway to the said town of Whelen Springs, Arkansas, and that she is also entitled to recover of and from the defendant, as a penalty for the over-charge upon said ticket, the further sum of $300.00 together with a reasonable attorney's fee to be taxed by the court, and also all cost in and about this suit pending.

4 The premises considered, Plaintiff prays judgment against the defendant for the sum of $300.66, together with a reasonable attorney's fee, and all cost herein.

(Signed) W. E. HAYNIE,
Attorney for the Plaintiff.

Endorsed on back: No. 1936. Filed and summons issued, July 6, 1915. T. M. Francis, Clerk.

5 In the Clark Circuit Court.

LUCY WILLIAMS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Defendant.

For cause of action plaintiff states that she is a citizen of Clark County, Arkansas; that the defendant is a Railroad Corporation, owning and operating a line of railroad across and through the said county of Clark, and other counties in the State of Arkansas; and upon the date hereinafter alleged, was engaged in the transportation of passengers for hire over its said line of railroad in the said county of Clark and other counties in the State of Arkansas; that on the 11th day of June, 1915, the defendant kept and maintained at Conway in Faulkner County, Arkansas, a regular passenger depot and ticket office, where regular passenger tickets were sold by defendant's regular authorized ticket agent; that on the said 11th day of June, 1915, plaintiff called upon defendant's said agent at Conway in said County of Faulkner, and demanded a ticket of said agent, authorizing her transportation over defendant's line of railroad from Conway in said County of Faulkner, State of Arkansas, to the town of Whelen Springs in the County of Clark, in said Sate of Arkansas; that the defendant's said agent at the said town of Conway, Faulkner County, Arkansas, wilfully, knowingly and wrongfully charged, de-

6 manded and received of and from plaintiff the sum of Four Dollars and Twenty cents ($4.20) for a regular passenger ticket for her transportation upon defendant's passenger train, over its said line of railroad from said town of Conway, Faulkner County, Arkansas, to said town of Whelen Springs, Arkansas, a distance of one hundred and eighteen (118) miles; that the defend-

ant's line of railroad over which plaintiff was transported upon said ticket was greatly in excess of seventy-five miles in length.

That the sum of Three Dollars and Fifty-four cents ($3.54) was on said date the maximum passenger fare which defendant's said agent was then and there authorized by law, or by the injunction granted by the Circuit Court of the United States, in and for the Western Division of the Eastern District of Arkansas, at the April term, 1915, which fact was then and there well known to defendant's said agent.

Plaintiff states that she is entitled to recover of and from the defendant the sum of sixty-six cents, the amount of the over-charge upon the said ticket, purchased of defendant's said agent at Conway, Faulkner County, Arkansas, to the town of Whelen Springs, Arkansas; and that she is also entitled to recover of and from said defendant, as a penalty for the over-charge, upon the said ticket, the further sum of $300.00, together with a reasonable attorney's fee, to be taxed by the Court, and all cost in and about this suit expended.

7 The premises considered, Plaintiff prays judgment against the defendant for the sum of $300.66, together with a reasonable attorney's fee and cost herein.

(Signed) W. E. HAYNIE,
Attorney for Plaintiff.

Endorsed on back: "Filed and Summons Issued July 6, 1915. T. M. Francis, Clerk."

8 In the Clark Circuit Court.

DICKSEY WILLIAMS, Plaintiff,

vs.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Defendant.

Answer.

For its answer to the plaintiff's complaint, defendant denies that on the 4th day of June, 1915, plaintiff called on defendant's ticket agent at Conway, in Faulkner County, Arkansas, and demanded a ticket of said agent authorizing her transportation over defendant's railroad from the town of Conway, Faulkner County, to the town of Whelen Springs, in Clark County, Arkansas, or that defendant's said agent wilfully, knowingly or wrongfully, or in any manner, charged or demanded or received of the plaintiff the sum of $4.20, for a regular passenger ticket for her transportation upon defendant's passenger train over the defendant's said line of railroad from said town of Conway, Faulkner County, to the town of Whelen Springs, Arkansas, or that it is a distance of 118 miles between said points, or that the sum of $3.54, on said date, was the maximum

passenger fare which the defendant's agent was then and there authorized by law, or by the injunction granted by the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, or that said fact was then and there well known to defendant's said agent.

9 Defendant denies that plaintiff is entitled to recover of the defendant the sum of 66 cents or that same was the amount of the over-charge upon said ticket purchased from defendant's said agent from Conway, Faulkner County, to Whelen Springs, Arkansas, upon which she was to be transported from said Conway, Arkansas, to Whelen Springs, Arkansas; or that she is also entitled to recover of the defendant as a penalty for the over-charge upon said ticket, the further sum of $300.00, together with a reasonable attorney's fee to be taxed by the Court.

II.

If such over-charge was made, it was the result of the honest mistake upon the part of said agent of the defendant, and without any intent to over-charge the plaintiff.

III.

For further defense to plaintiff's action, defendant says that the law of the State of Arkansas, which provides for the recovery of the penalty of not less than $50.00 nor more than $300.00 for each offense of a collection or charging by a common carrier of a greater compensation for the transportation of passengers, than three cents per mile, pursuant to which plaintiff claims the right to recover the penalty of $300.00 in this action, to-wit: The Act of the General Assembly of Arkansas of April 4, 1887, contained in Sections 6611 to 6620 of Kirby's Digest of 1904, and the amendments

10 thereto, is unconstitutional and void because it is in violation of Section 1 of Article XIV of the Articles in amendment to the Constitution of the United States, which provides that no State shall deprive any person of life or liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, in that the penalty aforesaid of $50.00 to $300.00 provided by the law of Arkansas is arbitrary and unreasonable and not proportioned to the actual damages sustained.

Said law of Arkansas is also repugnant and contrary to the aforesaid Section 1 of Article XIV of the Articles in Amendment to the Constitution of the United States, in that the penalty provided is so severe as to deprive the defendant of the right to resort to the Courts to test the validity of the legislation.

IV.

For further defense to plaintiff's action, defendant states that the enforcement of the penalty of $50 to $300 for the offense

charged in plaintiff's complaint would deprive defendant of its property without due process of law and deny to the defendant the equal protection of the laws, contrary to said Article XIV of the Articles in Amendment to the Constitution of the United States.

(Signed) R. E. WILEY,
Attorney for Defendant.

Endorsed on back: "Filed Jan. 25, 1917. H. T. Ross Clerk."

11 In the Clark Circuit Court.

LUCY WILLIAMS, Plaintiff,

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Defendant.

Answer.

For its answer to the plaintiff's complaint, defendant denies that on the 11th day of June, 1915, plaintiff called on defendant's ticket agent, at Conway, in Faulkner County, Arkansas, and demanded a ticket of said agent authorizing her transportation over defendant's railroad from the town of Conway, Faulkner County, Arkansas, to the town of Whelen Springs, in Clark County, Arkansas, or that defendant's said agent wilfully, knowingly, or wrongfully, or in any manner, charged or demanded or received of the plaintiff the sum of $4.20 for a regular passenger ticket for her transportation upon defendant's passenger train over the defendant's said line of railroad from said town of Conway, Faulkner County, Arkansas, to the town of Whelen Springs, Arkansas, or that the sum of $3.54 on said date, was the maximum passenger fare which the defendant's agent was then and there authorized by law or by the injunction granted by the Circuit Court of the United States for the Western Division of the Eastern District of Arkansas, or that said fact was then and there well known to defendant's said agent.

12 Defendant denies that plaintiff is entitled to recover of the defendant the sum of 66 cents, or that same was the amount of the over-charge upon said ticket purchased from defendant's said agent from Conway, Faulkner County, to Whelen Springs, Arkansas, upon which she was to be transported from said Conway, Arkansas, to Whelen Springs, Arkansas; or that she is also entitled to recover of the defendant as a penalty for the over-charge upon said ticket, the further sum of $300.00 together with a reasonable attorney's fee to be taxed by the Court.

II.

If any such over-charge was made, it was the result of the honest mistake upon the part of said agent of the defendant, and without any intent to over-charge the plaintiff.

III.

For further defense to plaintiff's action, defendant says that the law of the State of Arkansas, which provides for the recovery of the penalty of not less than $50.00 nor more than $300.00, for each offense of a collection or charging by a common carrier of a greater compensation for the transportation of passengers, than three cents per mile, pursuant to which plaintiff claims the right to recover the penalty of $300.00 in this action, to-wit: The Act of the General Assembly of Arkansas, of April 4, 1887, contained in Sections 6611 to 6620 of Kirby's Digest of 1904, and the amendments
13 thereto, is unconstitutional and void because it is in violation of Section 1 of Article XIV of the Articles in Amendment to the Constitution of the United States, which provides that no State shall deprive any person of life or liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws, in that the penalty aforesaid of $50.00 to $300.00 provided by the law of Arkansas is arbitrary and unreasonable and not proportioned to the actual damages sustained.

The said law of Arkansas is also repugnant and contrary to the aforesaid Section 1 of Article XIV of the Articles in Amendment to the Constitution of the United States, in that the penalty provided is so severe as to deprive the defendant of the right to resort to the Courts to test the validity of the Legislation.

IV.

For further defense to plaintiff's action defendant states that the enforcement of the penalty of $50 to $300 for the offense charged in plaintiff's complaint would deprive the defendant of its property without due process of law and deny to the defendant the equal protection of the laws contrary to said Article XIV of the Articles in Amendment to the Constitution of the United States.

(Signed) R. E. WILEY,
Attorney for Defendant.

Endorsed: "Filed Jan. 25, 1917. H. T. Ross, Clerk."

14 In the Clark Circuit Court.

Consolidated Cause.

No. 1936.

DICKSEY and LUCY WILLIAMS, Plaintiffs,

vs.

ST. L., I. M. & S. RY. CO., Defendant.

The following orders of the court in the above mentioned actions were made on the dates as shown, respectively, to-wit:

15 Clark Circuit Court, August term, 1915, August 23, 1915.

No. 1938.

LUCY WILLIAMS

vs.

ST. L., I. M. & S. RY. CO.

Defendant Given until Thursday of First Week to File its Answer.

Comes the defendant by D. E. Smith and upon his motion the Court allows the defendant until Thursday of the first week of this term of Court to file its answer.

16 In the Clark Circuit Court, August Term, 1915, August 23, 1915.

No. 1936.

DICKSEY WILLIAMS

vs.

ST. L., I. M. & S. RY. CO.

Defendant Given until Thursday of the 1st Week to File Answer.

Comes the defendant by D. E. Smith, and upon his motion the Court allows the defendant until Thursday of the First week of this term of Court to file its answer.

17 In the Clark Circuit Court, January term, 1917, January 25, 1917.

No. 1936.

DICKSEY WILLIAMS

v.

ST. L., I. M. & S. RY. CO.

Answer Filed.

Comes the defendant herein by R. E. Wiley its attorney and files its answer to the complaint herein.

18 Clark Circuit Court, January term, 1917, January 25, 1917.

No. 1938.

LUCY WILLIAMS

v.

ST. L., I. M. & S. RY. CO.

Answer Filed.

Comes the defendant herein by its attorney R. E. Wiley and files its answer to the complaint herein.

19 Clark Circuit Court, January term, 1917, January 25, 1917.

No. 1936.

DICKSEY WILLIAMS

vs.

ST. L., I. M. & S. RY. CO.

Motion to Strike Out Defendant's Answer Overruled and Plaintiff Excepts.

On this day comes the defendant herein by R. E. Wiley its attorney and files its answer herein. Now comes the plaintiff herein by her attorney, and files her motion to strike from the record defendant's filing of its answer herein, because it was not filed in due time. Which is by the court overruled, to which plaintiff excepts and asks that her exceptions be noted of record, which is accordingly done by order of the court.

20 Clark Circuit Court.

No. 1938.

LUCY WILLIAMS

v.

ST. L., I. M. & S. RY. CO.

Motion to Strike Out Defendant's Answer Overruled and Plaintiff Excepts.

Comes the plaintiff herein by W. E. Haynie, her attorney, and files her motion to strike from the record defendant's answer herein, because the same was not filed in time. Which motion is by the

court overruled and plaintiff asks that her exceptions be noted of record which is accordingly done, by order of the court.

21 In the Clark Circuit Court, January Term, 1917, January 25th, 1917.

No. 1936.

DICKSEY & LUCY WILLIAMS
v.
ST. L., I. M. & S. RY. CO.

Nos. 1936 and 1938 Consolidated, Jury Trial With 10 Jurors and Verdict for Plaintiffs.

Comes this cause upon its regular turn upon the docket and comes all of the parties herein and answer ready for trial, numbers 1936 and 1938 having been by order of the Court consolidated and proceed under the number of 1936. Thereupon by agreement this cause is submitted to a jury of ten men of the regular panel, who had been duly sworn and impanelled, upon the complaint herein, the evidence adduced herein, the instructions of the Court and the argument of counsel. Now comes said jury and returns into court the following verdict: "We, the jury, find for the plaintiff, Miss Lucy Williams in the sum of 66 cents overcharge and $75 penalty. R. S. Stephens, Foreman," and "We, the jury, find for the plaintiff, Miss Dicksey Williams, in the sum of 66 cents over-charge and $75.00 penalty. R. S. Stephens, Foreman."

It is therefore by the Court considered, ordered and adjudged that Dicksey Williams do have and recover of and from the St. L. I. M. & S. Ry. Co. the sum of ($75.66) Seventy-five and 66/100 Dollars and her costs in and about this suit expended, and also it is by the court, considered, ordered and adjudged, that Lucy
22 Williams do have and recover of and from the St. L. I. M. & S. Ry. Co. the sum of Seventy-five and 66/100 Dollars, ($75.66) and all of her costs in and about this suit expended.

23 Clark Circuit Court, January Term, 1917, January 26, 1917.

No. 1936.

DICKSEY & LUCY WILLIAMS
vs.
ST. L., I. M. & S. RY. CO.

Defendant's Motion for New Trial Filed and Overruled. Defendant Excepts, Prays and Granted an Appeal and Given 90 Days for the Filing Bill of Exceptions.

On this day comes all of the parties herein by their respective attorneys and there is submitted to the court defendant's Motion for a

New Trial herein, which the court considers, and being sufficiently advised, it is by the court considered, ordered and adjudged that said motion for a new trial be and the same is hereby overruled and denied, to which action of the court the defendant saved its exceptions and prayed and is granted an appeal to the Supreme Court of Arkansas, which is granted and on motion of the defendant, 90 days' time from this date is granted to defendant in which to prepare and file its bill of exceptions herein.

24 Clark Circuit Court, January Term, 1917, February 6, 1917.

No. 1936.

DICKSEY & LUCY WILLIAMS

v.

ST. L., I. M. & S. RY. CO.

Attorney's Fee Fixed by the Court at $25.00 for Each Plaintiff and Defendant Excepts.

Comes all of the parties herein by their respective attorneys and it is by the Court considered, ordered and adjudged that the plaintiffs herein be allowed the sum of $25.00 each as attorneys' fees, the same to be taxed as costs herein. To which defendant excepts and asks that his exceptions be and the same *is* noted of record.

25 In the Clark Circuit Court.

No. 1936.

DICKSEY WILLIAMS, Plaintiff,

vs.

ST. L., I. M. & S. RY. CO., Defendant.

and

No. 1938.

LUCY WILLIAMS, Plaintiff,

vs.

ST. L., I. M. & S. RY. CO., Defendant.

Consolidated Cause No. 1936.

Appearances:

For the Plaintiffs, W. E. Haynie.
For the Defendant, R. E. Wiley.

Bill of Exceptions.

Be it remembered, That on this the 25th day of January, 1917, being a regular day of the January term, 1917, of the Clark circuit court, before the Honorable G. R. Haynie, Judge of said Court, and a jury, the above matter coming on for trial, the following proceedings were had, testimony offered, objections made, exceptions saved, instructions asked, given and refused, etc., all of which is as follows, to-wit:

Plaintiffs moved the court to strike from the files, in each case, respectively, the answers of the defendant, because they were filed out of time; whereupon the court asked the defendant's counsel for a statement of the cause of the delay in filing the answers, and upon defendant's counsel making such statement, the court overruled the motions to strike the answers; to which action of the Court plaintiffs saved their exceptions in each case.

26 The plaintiffs to sustain the issues in their behalf introduced the following testimony:

LUCY WILLIAMS, one of the plaintiffs, being first duly sworn, testified as follows, to-wit:

Mr. Haynie:

Q. What is your name?
A. Lucy Williams.
Q. Where do you live?
A. About two and one-half miles West of Whelen.
Q. In this County?
A. Yes, sir.
Q. Miss Lucy, it is alleged here that you bought a ticket from the Iron Mountain Railway Company in the year 1915 for which they charged you too much for your fare from Conway to Whelen Springs—you were up there going to school?
A. No, sir; I was attending the Commencement—my sister was there.
Q. You were there attending the Commencement?
A. Yes, sir.
Q. I wish you would tell the jury in your own way just how that transpired and when it was.
A. Well, it was on June 11, 1915, I had attended the Commencement for school had closed and I spent one week visiting. I went down on June 11 and bought my ticket, and I paid $4.20 for it—from Conway to Whelen Springs, I had made the trip several times and I only paid $3.54. I knew he was mistaken and when I
27 bought my ticket I told the agent that it was too much to charge. I paid two cents a mile when I came up, and I didn't think it had gone to four cents, and at that rate it was about four cents a mile; he said there was no mistake, and I paid the $4.20 and went on with the ticket.

Q. When you went up there you paid a fare of two cents a mile?
A. Yes, sir.
Q. Where did you board the train?
A. At Gurdon.
Q. What did you pay for that ticket there?
A. $2.22.
Q. He did not offer to refund the money, but contended that that was the correct fare and kept your money?
A. Yes, sir.

Cross-examination.

Mr. Wiley:

Q. Was there anybody with you when you went to the station?
A. Yes, sir; there was a girl with me; she did not go to the window with me when I got the ticket, she was in the room.
Q. You did not go with a crowd of girls at all?
A. No, sir.
Q. You went when there was no rush or urgency about it?
A. Yes, sir.

28 Q. What time of day did you go there to buy your ticket?
A. It was in the morni*b*g just before the train left, but it was about eight o'clock, I think. I went down that morning and bought my ticket.
Q. Eight o'clock in the morning?
A. Yes, sir; some where around about that time.
Q. Was there anybody there buying tickets?
A. No, sir.
Q. Do you know from whom you bought the ticket?
A. No, sir.
Q. Was there just one man engaged in the transaction?
A. Yes, sir.
Q. When did you go up there on this trip?
A. I don't know just the date—but it was something over a week I had been up there.
Q. Had your sister gone home already?
A. Yes, sir.
Q. Do you know what time of the month you went over there on this trip?
A. No, sir; I don't know just what date it was.
Q. Was it before the first of June?
A. It was along about that time—I don't know for sure.
Q. It was before the school was out?
A. The commencement exercises began the next day after I got there—Yes, sir.
Q. And you think it was around the first of June?

A. Yes, sir.

29 Q. How much fare did you pay?
A. $2.22.
Q. From Gurdon to Conway?
A. Yes, sir.

Q. Had you ever made the trip to Conway before?
A. Yes, sir.
Q. Where did you go from?
A. From Whelen.
Q. How much fare did you pay?
A. $3.54.
Q. When had you made that trip?
A. I was in school there in 1911 and 1913.
Q. And those were the times you had made the trip?
A. Yes, sir.
Q. You did not make any trip from Whelen Springs just shortly after this?
A. Yes, sir; I was in school the past year.
Q. Just previous to your going back in 1915?
A. I have been up there since then.
Q. Before the trip when you were overcharged?
A. Yes, sir.
Q. How long had it been since you had made a trip over there?
A. About a year.
Q. How much fare did you pay?
A. $3.54.

Witness Excused.

30 DICKSEY WILLIAMS, one of the plaintiffs, being first duly sworn, testified as follows, to-wit:

Direct examination.

Mr. Haynie:

Q. What is you- name?
A. Dicksey Williams.
Q. Whaere do you live?
A. Out from Gurdon about eight miles.
Q. You are a sister to Miss Lucy and your father is Mr. Williams here?
A. Yes, sir.
Q. Did you attend school in Conway in 1915?
A. No, sir.
Q. What year did you attend?
A. In 1916.
Q. Did you attend the commencement there in 1915?
A. Yes, sir.
Q. Do you remember what time you left there?
A. In 1916?
Q. No, in 1915?
A. At the time they over-charged me?
Q. Yes?
A. June 4th.
Q. Who was with you?
A. My oldest sister.

Q. What did you pay, on that occasion, for your ticket?
31 A. $4.20.
Q. $4.20?
A. Yes, sir.
Q. From Conway to what point?
A. Whelen Springs.
Q. When you went up there, where did you go from?
A. From Gurdon.
Q. Did you go up there with your sister?
A. Yes, sir; Lucy.
Q. Have you made the trip from Conway to Whelen Springs, or from Whelen Springs to Conway, since 1915?
A. Yes, sir.
Q. How many times have you made it?
A. I don't know how many—I went up there and then came back Christmas, and then I went back and came home in the Spring.
Q. What fare did you pay?
A. $3.54.
Q. Was anything said about the over-charge at the time?
A. No, sir.

Cross-examination.

Mr. Wiley:

Q. What time was that?
A. June 4, 1915.
Q. How long had you been at Conway on that trip?
A. I was there just a week—I went to the Commencement.
Q. What time of day did you buy your ticket back?
32 A. In the morning, in time to get on that train.
Q. Was there anybody else down there to buy tickets at that time?
A. No, sir.
Q. Was there any other girls going home at the same time?
A. My sister.
Q. Just you and your sister?
A. Yes, sir.
Q. Wasn't there a crowd of girls going away?
A. No, sir.
Q. Have you a sister named Jesse?
A. Yes, sir.
Q. Was she with you at the time?
A. Yes, sir.
Q. You just asked for a ticket to Whelen Springs and he charged you $4.20?
A. Yes, sir.
Q. And you said nothing about the mistake being made at that time?
A. No, sir.

By the Court: Is there any question about the correct fare—Mr. Wiley, what have you set up in your answer.

Mr. Wiley: We have not set up anything as to the fare.

The Court: Do you know what the correct fare was from Conway to Whelen Springs at three cents per mile?

Witness: $3.54.

33 Mr. Wiley: How do you know what the correct fare was?

A. When I went up there at two cents per miie I paid from Gurdon to Conway, $2.22 and it is 7 miles from Gurdon to Whelen Springs, and when I came back they charged me $4.20.

Q. When did you go there from Gurdon on this trip?

A. I don't know the exact date—I was up there a week though.

Q. You do not know the distance from Conway to Whelen Springs, do you?

A. One hundred eighteen (118) miles.

Q. How do you know?

A. I have gone up there since and paid 3 cents a mile rate and it is $3.54.

Q. Well, I know, but how do you know the distance?

A. Well, by what I paid.

Q. You know that you paid $3.54.

A. Yes, sir.

Q. And that is the only way you know?

A. Yes, sir.

Redirect examination.

Mr. Haynie:

Q. You have paid that on more than one occasion?

A. Yes, sir. I have gone three or four times, and it is $3.54.

Witness excused.

34 Lucy Williams, Recalled and testified as follows:

Redirect examination.

Mr. Haynie:

Q. Do you know the distance from Conway to Whelen Springs?

A. I think I do.

Q. What is it?

A. 118 miles.

Recross-examination.

Mr. Wiley:

Q. How do you know what the distance is?

A. I paid $3.54, and they say it is three cents a mile, and one-third of that is 118.

Q. Who says so; you say "they;" who is "they?"

A. That is what you have to pay for your ticket.
Q. Who says that?
A. The railroad company, I guess, says so.
Q. Who said it to you?
A. I don't remember who said it.
Q. You really don't know how far it is, do you?
A. Yes, sir; I think I do.
Q. That is the only way you know it; because you have been charged $3.54?
A. Yes, sir.
Q. That is the only way you know?
A. I have been told that it was.
Q. I know, but that is not testimony?
35 A. I guess that is the only proof that I have—I never measured it.
Q. When were you charged $3.54?
A. I was charged that last June when I came home.
Q. Last June?
A. Yes, sir; I was charged that the last time I came, when I came home and when I went back.
Q. And you were charged $4.20 on this occasion?
A. Yes, sir.

Witness excused.

Whereupon, the defendant, St. Louis, Iron Mountain & Southern Railway Company moved to exclude from the consideration of the jury all the testimony of the witnesses Lucy Williams and Dicksey Wiiliams, as to the distance from Conway to Whelen Springs, and as to correct fare at three cents per mile.

The court overruled said Motion and refused to so exclude said testimony, and permitted the same to be considered by the jury, to which action of the court defendant at the time duly objected and asked that its exceptions be noted of record, which is accordingly done.

This was all the testimony in the case.

36 *Instructions.*

At the request of the Plaintiffs, the court, at the conclusion of the testimony, instructed the jury orally, as follows:

I.

"Gentlemen of the Jury, this is an action by the plaintiffs, Lucy Williams and Dicksey Williams, suing separately for penalty against the defendant for an alleged overcharge in passenger fare from the town of Conway in Faulkner County to Whelen Springs in Clark County; the Statute which authorizes that kind of action, reads as follows:

'Section 6620. Any of the persons or corporations mentioned in sections 6611, 6612, 6613 and 6614, that shall charge, demand, take or receive from any person or persons aforesaid any greater compensation for the transportation of passengers than is in this act allowed or prescribed, shall forfeit and pay for every such offense any sum not less than fifty dollars, nor more than three hundred dollars and costs of suit, including a reasonable attorney's fee, to be taxed by the court where the same is heard on original action, by appeal or otherwise, to be recovered in a suit at law by the party aggrieved in any court of competent jurisdiction. And any officer, agent or employe of any such person or corporation who shall knowingly and wilfully violate the provisions of this Act, shall be liable to the penalties prescribed in this section, to be recovered in the same manner.'

37 "If you find from the evidence in this case, gentlemen, that the defendant by its agent at Conway charged, demanded or received from the plaintiffs in this case more than three (3) cents per mile from Conway to Whelen Springs, as alleged in the complaint, then you will find for the plaintiff in each case, the difference between the amount they should be charged at the rate of three (3) cents per mile and the amount that was charged; and in addition to that you will find for each one of these plaintiffs, a penalty of not less than $50 nor more than $300 in each case."

Defendant at the time duly objected to the Court giving said Instruction No. 1, and also to the reading to the jury of the statute, Kirby's Digest No. 6620; the court overruled the defendant's objections, and defendant duly saved its exceptions.

Defendant's Instructions.

9.

The court instructs you that the burden of proof is on the plaintiffs to prove that a charge in excess of three cents per mile was made and unless they have done so your verdicts should be for the defendant.

The Court gave to the jury defendant's instruction No. 9 as requested.

38 *Defendant's Instructions.*

(Refused.)

1.

You will return your verdict for the defendant in both cases.

2.

You will return your verdict for the defendant in the Lucy Williams case.

4.

You will return your verdict for the defendant in the Dicksey Williams case.

5.

Even if you believe from the testimony that defendant's agent overcharged plaintiffs, or either of them, still if you also believe from the testimony that it was through inadvertence and not intentional, but was an honest mistake on the part of the agent, then your verdict should be for the defendant in each case where you so find.

6.

The court instructs you that on the penalty provided by the law of Arkansas under which plaintiffs bring these actions, is unreasonable and arbitrary and out of proportion to the damages suffered as a result of the overcharge, and said law is therefore contrary
39 to the Fourteenth Amendment to the Constitution of the United States in that it deprives defendant of property without due process of law and denies to defendant the equal protection of the laws. Plaintiffs therefore cannot recover anything in this action further than the actual amount of the overcharge, if any, which you find was charged them in excess of the lawful fare.

7.

The penalties provided by the laws of Arkansas under which plaintiff brings this action *is* so severe as to deprive the defendant of the right to resort to the courts to test the validity of said law and *is* therefore invalid because contrary to the Fourteenth Amendment to the Constitution of the United States, and your verdict should be for the defendant in both cases in so far as the penalty *is* claimed is concerned.

8.

Plaintiffs cannot recover any penalty for over-charge if you find there was any over-charge.

The Court, separately and severally, refused to give each and every one and all of the defendant's requested instructions numbered as 1, 2, 4, 5, 6, 7, and 8, respectively, to which action of the court
40 in refusing to give to the jury each one, and all of said instructions numbered 1, 2, 4, 5, 6, 7, and 8, as requested by the defendant, defendant at the time separately and severally objected and asked that its separate and several exceptions be noted of record in each instance of such refusal to give said instructions numbered respectively as 1, 2, 4, 5, 6, 7, and 8.

At the conclusion of the testimony the defendant requested the

court to give its instruction No. 1, directing the jury to return a verdict for the defendant in both cases; The court overruled the request and refused to give such instruction, to which action of the court defendant objected and at the time saved its exceptions. Thereafter, the defendant made all of its other requests for instructions, including the one No. 9, given by the court.

Thereupon, after hearing all the testimony in the case, the instructions of the court and argument of counsel the jury retired to consider of its verdict, and after a while returned into open court the following verdict:

"We, the jury, find for the plaintiff, Miss Lucy Williams, 66 cents over-charge, and $75.00 penalty

N. S. STEPHENS, *Foreman.*"

and

"We, the jury, find for the plaintiff, Miss Dixie Williams, 66 cents over-charge, and $75.00 penalty.

N. S. STEPHENS, *Foreman.*"

To which verdict of the jury, defendant at the time ob-
41 jected and saved its separate and several exceptions.

42 Thereupon, on January 26, 1917, comes the defendant, St. Louis, Iron Mountain and Southern Railway Company, and files its motion for New Trial herein, which motion is in words and figures as follows, to-wit:

In the Clark Circuit Court.

(Consolidated Case No. 1936.)

LUCY WILLIAMS, Plaintiff,

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Defendant.

DICKSEY WILLIAMS, Plaintiff,

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Defendant.

Motion for New Trial.

Comes the defendant and moves the court to set aside the verdicts of the jury and the judgments of the court thereon in each of the above cases, and grant it a new trial, and for cause states:

1. The verdicts and each of them are contrary to the law.
2. The verdicts and each of them are contrary to the evidence.
3. The verdicts and each of them are contrary to the law and the evidence.
4. The court erred in refusing on defendant's motion to exclude from the jury the testimony of Lucy Williams and Dicksey
43 Williams, relative to the distance from Conway to Whelen Springs, and as to what was the lawful and proper fare from Conway to Whelen Springs, and in permitting said testimony to go to the jury and be considered by them.
5. The court erred in giving in charge to the jury and reading to them the statutes, Section 6620 of Kirby's Digest.
6. The court erred in giving to the jury his oral instruction No. 1.
7. The court erred in refusing to give to the jury defendant's instruction No. 1.
8. The court erred in refusing to give to the jury defendant's instruction No. 2.
9. The court erred in refusing to give to the jury defendant's instruction No. 4.
10. The court erred in refusing to give to the jury defendant's instruction No. 6.
11. The court erred in refusing to give to the jury defendant's instruction No. 7.
12. The court erred in refusing to give to the jury defendant's instruction No. 8.
13. The court erred in entering judgment against defendant for the plaintiffs, and each of them.
14. The court erred in allowing and fixing and rendering judgments for attorney's fee in favor of the plaintiffs, and each of them.
44 15. The verdicts, and each of them are excessive.

(Signed) R. E. WILEY,
Attorney for Defendant.

Endorsed on the back: "Filed Jany. 26, 1917. H. T. Ross, Clerk."

And the said motion coming on to be heard, and the court being well and sufficiently advised in the premises doth overrule and deny said Motion for New Trial, to which action of the court defendant at the time objected and asked that its exceptions be noted of record which is done.

Thereupon, the defendant prayed and is granted an appeal to the Supreme Court of Arkansas; and time being asked, defendant is grated 90 days from this date, within which to prepare and file its bill of exceptions herein.

And now, within the time allowed by the Court, comes the defendant and presents to me, the undersigned Judge of said Court, this its bill of exceptions herein, which is by me, said Judge, found

to be and contain a true and correct transcript of all the testimony, objections, exceptions, instructions, asked, given and refused,
45 etc., and is by me approved as such and ordered filed as a part of the record in this consolidated case.

Witness my hand as such Judge, on this 28th day of March, 1917.

(Signed) G. R. HAYNIE,
Judge of the Clark Circuit Court Within and for the 8th Judicial Circuit of Arkansas.

Bill of Exceptions approved as correct.

(Signed) W. E. HAYNIE,
Attorney for Plaintiff.

(Signed) R. E. WILEY,
Attorney for Defendant.

Filed in my office this 29 day of March, 1917. H. T. Ross, Clerk.

46 STATE OF ARKANSAS,
County of Clark, ss:

I, H. T. Ross, Clerk of the Clark Circuit Court, do hereby certify that the within and foregoing — pages of typewritten matter contain and are a true and correct transcript of all pleadings, court orders, bill of exceptions, etc., as the same now appear of record and on file in my office in the consolidated case No. 1936, Lucy Williams v. St. L. I. M. & S. Ry. Co. and Dicksey Williams v. St. L. I. M. & S. Ry. Co.

Witness my hand and seal of said Court on this 29 day of March, 1917.

[SEAL.] H. T. ROSS.
Clerk of Clark Circuit Court.

47 In the Clark Circuit Court.

No. 1936.

DICKSEY WILLIAMS, Plaintiff,

VS.

ST. L., I. M. & S. RY. CO., Defendant.

Clerk's Cost.

Filing Compalint .10 Docketing case .40	$ 50
Issuing writ .75 1 Copy .25 Tax on Writ .50	1 50
Filing Writ .10 Posting Docket .40 Judge Docket .40	90
Appearances .15 Issue Joined .15	30
Fee Docket .10 Filing Papers .20	30
4 Orders .80 Index .40	1 20
Certifying Cost .50	50
	$5 20

Sheriff's Cost.

Serving Writ .50 Mileage .10	60
Calling Witnesses .25	25
Other Fees before the Court	30
	$1 15

No. 1938.

LUCY WILLIAMS, Plaintiff,

VS.

ST. L., I. M. & S. RY. CO., Defendant.

Clerk's Cost.

File Complaint .10 Docketing cause .40	$ 50
Issuing Writ .75 1 Copy .25	1 00
Tax .50 File Writ .10	60
Posting Docket .40 Judge's Docket .40	80
Appearances .15 Issue Joined .15	30
Entering Judgment .50 Indexing .20	70
Trans. Judgment .50 Indexing .20	70
Filing 2 papers .20 Certifying .50	70
Entering Satisfaction Record .20 Fee Docket .10	30
4 Orders .80 Index .40	1 20
	$6 80

Sheriff's Cost.

Serving Writ .50 Mileage .10	$ 60
Other Fees Before the Court .30	30
	$ 90

48 In the Clark Circuit Court.

No. 1936, Consolidated.

DICKSEY WILLIAMS & LUCY WILLIAMS, Plaintiffs,

vs.

ST. L., I. M. & S. RY. CO., Defendant.

Clerk's Cost.

Submission .15 Trial .25	$ 40
Swearing Witness to Testify .10	10
Swearing Jurors as to Qualifications .10	10
Swearing and Entering Jury to try cause .50	50
Verdict .15	65
Record Verdict .25 Entering Judgment .50	75
Index .20	20
Trans. to Judgment Docket .50 Index 2 times .20	70
Satisfaction of Record .20 Orders .60 Index .30	1 10
Appeal .50 Fee Docket .10	60
	$4 50
Jury Tax 3.00 Steno. Tax 3.00	6 00
Transcript Fee	12 00
	$22 50

Summary in Above Cases.

Clerk's Cost in No. 1936	$5 20
Sheriff's Cost in No. 1936	1 15
Clerk's Cost in No. 1938	6 80
Sheriff's Cost in No. 1938	90
Clerk's Cost in No. 1936 Consolidated	4 50
Jury Tax 3.00 & Steno. Tax 3.00 in No. 1936 Consolidated.	6 00
Transcript Fee in No. 1936 Consolidated	12 00
Total Cost	$36 55

Certificate.

STATE OF ARKANSAS,
County of Clark:

I, H. T. Ross, Circuit Clerk in and for the county aforesaid, do hereby certify that the foregoing 2 pages of typewritten matter contains a true and correct copy of the cost in above styled cause in said court, for which the defendant is liable, and that the Cost Bill was omitted from the original transcript filed in the Supreme Court of Arkansas.

Given under my hand this the 26th day of July, 1917.
[SEAL.] H. T. ROSS, *Clerk.*

No. 4954.

49 ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Appellant,

v.

DICKSEY WILLIAMS and LUCY WILLIAMS, Appellees.

Clark, Clk.
G. R. Haynie, J.

TRANSCRIPT.

Filed July 24, 1917. W. P. Sadler, Clerk. By J. H. Campbell, D. C.

50 STATE OF ARKANSAS,
In the Supreme Court, ss:

Be it remembered, that at a term of the Supreme Court of the State of Arkansas, begun and held on the 26th day, being the fourth Monday of November, A. D. 1917, at the Courthouse, in the City of Little Rock, the following proceedings were had, to-wit: On the 3rd day of December, 1917, a day of said term:

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Appellant,

vs.

DICKSEY WILLIAMS and LUCY WILLIAMS, Appellees.

Appeal from Clark Circuit Court.

This cause being regularly called, come the parties thereto by their attorneys, and said cause is submitted upon the transcript of the record and the briefs filed, and is by the court taken under advisement.

November Term, 1917.

(Caption Omitted.)

December 10, 1917.

This cause came on to be heard upon the transcript of the circuit court of Clark county, and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the Court that the judgment
51 of said circuit court in this cause rendered be and the same is hereby, in all things, affirmed with costs.

It is further considered that said appellees recover of said appellant all their costs in this court in this cause expended, and have execution thereof.

52 In the Supreme Court of Arkansas, Dec. 10, 1917.

No. 32.

St. L., I. M. & S. Ry. Co.

v.

Williams.

Opinion.

Hart, *J.*

Dicksey Williams and Lucy Williams filed separate suits against the St. Louis, Iron Mountain & Southern Railway Company under Section 6620 of Kirby's Digest to recover the penalties allowed for over-charge in the transportation of passengers. The suits were consolidated and tried together. The jury in each case returned a verdict for sixty-six cents over-charge and Seventy-five Dollars penalty. From the judgment rendered, the Railway Company has appealed.

It is first insisted by counsel for the railway company that the evidence is not legally sufficient to support the verdict. Dicksey Williams and Lucy Williams reside near Whelen Springs in Clark county, Arkansas. In June, 1915, they purchased tickets from Conway, Arkansas, to Whelen Springs. The railway agent demanded and received the sum of $4.20 from each of them for her ticket.

The girls testified that it was one hundred and eighteen miles from Conway to Whelen Springs and that the regular fare was $3.54; that to charge them $4.20 for a ticket amounted to an over-charge of sixty-six cents. Upon being asked on cross-examination
53 how they knew the distance from Conway to Whelen Springs to be one hundred and eighteen miles, they stated that they had made the trip several different times before the time in question, and that they had each time been charged the sum of

$3.54; that the fare at the time was three cents per mile. It is not practical that an intended passenger should measure the distance from the point of embarkation to his place of destination. The fare which the railway company is allowed to charge is fixed by law and the passenger must necessarily rely upon the statement made by the agent of the railway company whose duty it is to sell him a ticket. The girls testified that they had made the trip from Conway to Whelen Springs, at several different times prior to the one in question and had been charged the sum of $3.54 for a ticket on the basis that the fare was three cents per mile. From this the jury might have inferred the distance to be one hundred and eighteen miles and it follows that there was evidence legally sufficient to warrant the verdict for sixty-six cents over-charge.

It is next contended that Section 6620 of Kirby's Digest is in violation of Section One of the Fourteenth Amendment of the Constitution of the United States and deprives the railway company of its property without due process of law. The validity of this statute was upheld in Chicago, Rock Island & Pacific Railway Company v. Davis, 114 Ark. 519. The statute in question provides for a penalty for over-charge of not less than fifty dollars nor more than $300.00 and costs of suit including a reasonable attorney's fee.

54 Counsel for the railway company again ask us to take up this question on the ground that the statute is invalid on its face on account of the size of the penalties prescribed. They point to the fact that railway companies only violate the statute in rare instances. This may be true and it may be also true that the penalties prescribed by the statute compels obedience to its mandates. Be that as it may, we have already decided the question after mature deliberation, and most of the cases cited by counsel, in their brief in the present case were cited and considered by the court in the case where the question was decided. Therefore we decline to take up the question again and adhere to our original decision.

The judgment will be affirmed.

55 SUPREME COURT,
State of Arkansas, ss:

I, W. P. Sadler, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of the St. Louis, Iron Mountain & Southern Railway Company, Appellant, v. Dicksey Williams and Lucy Williams, Appellees, and also of the opinion of the court rendered therein, as the same now appears on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this February 4, 1918.

[Seal of the Supreme Court of Arkansas.]

W. P. SADLER,
Clerk Supreme Court of Arkansas.

56 In the Supreme Court of Arkansas.

No. 4954.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Appellant,

versus

DICKSEY WILLIAMS and LUCY WILLIAMS, Appellees.

Assignment of Errors.

Now comes the Appellant, St. Louis, Iron Mountain and Southern Railway Company, and files herewith its Petition for Writ of Error to the Supreme Court of the United States, and says there are errors in the record of the proceedings in the above entitled cause and for the purpose of having the same reviewed and corrected in the Supreme Court of the United States, appellant makes the following Assignment of Errors, to-wit:

First.

The Supreme Court of Arkansas erred in deciding that the Statute of the State of Arkansas, being Section 6620 of
57 Kirby's Digest of the Statutes of Arkansas, which provides penalty for receiving an over-charge in passenger fare, was valid and constitutional, and in refusing to decide and hold that said Statute was contrary to the Constitution of the United States and therefore invalid.

Second.

Said court erred in refusing to decide that the penalty provided by the Statute aforesaid is arbitrary and unreasonable and not proportionate to the actual damages sustained and therefore in violation of Section One of Article Fourteen of the Articles in Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law nor deny to any person the equal protection of the laws.

Third.

Said court erred in refusing to decide that the penalty provided by the Statute aforesaid would deprive appellant of its property without due process of law and deny to the appellant the equal protection of the laws, contrary to said Section One of Article Fourteen of the Articles in amendment to the Constitution of the United States.

Fourth.

Said Court erred in refusing to decide that the penalties provided by the Statute aforesaid are so severe as to deprive appellant of the

right to resort to the courts to test the validity of said law and are therefore invalid because contrary to the said Fourteenth amendment to the Constitution of the United States.

58 Fifth.

Said court erred in affirming the action of the trial court which denied appellant's request made to the trial court that the jury be instructed that the penalty provided by the Statute of Arkansas, aforesaid, was unreasonable and arbitrary and out of proportion to the damages suffered from the overcharge, and was therefore contrary to the Fourteenth amendment to the Constitution of the United States in that it deprived appellant of property without due process of law and denied to appellant the equal protection of the laws.

Sixth.

Said court erred in affirming the action of the trial court which denied the request of appellant that the jury be instructed that the penalties provided by the Statute of Arkansas, aforesaid, were so severe as to deprive appellant of the right to resort to the courts to test the validity of said law and were therefore invalid because contrary to the Fourteenth amendment of the Constitution of the United States.

Seventh.

Said court erred in affirming the action of the trial court which denied appellant's request made to the trial court, that the jury be instructed that the appellees could not recover any penalty for the overcharge.

For which errors appellant prays that the said judgment of the Supreme Court of Arkansas be reversed and judgment rendered in favor of appellant and for costs.

EDGAR B. KINSWORTHY,
ROBERT E. WILEY,
EDWARD J. WHITE,
Attorneys for Appellant.

Filed Jany. 29, 1918. W. P. Sadler, Clk., by J. H. Campbell, D. C.

59 In the Supreme Court of Arkansas.

No. 4954.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY, Appellant,

versus

DICKSEY WILLIAMS and LUCY WILLIAMS, Appellees.

Petition for Writ of Error.

Considering itself aggrieved by the final decision of the Supreme Court of Arkansas in rendering judgment against it in the above entitled cause, appellant, St. Louis, Iron Mountain and Southern Railway Company hereby prays a writ of error from said decision and judgment to the Supreme Court of the United States and for an order fixing the amount of the Supersedeas Bond. And files its assignment of errors herewith.

EDGAR B. KINSWORTHY,
ROBERT E. WILEY,
EDWARD J. WHITE,
Attorneys for Appellant.

Let the writ of error issue upon the execution of a bond by appellant to appellees in the sum of five hundred dollars, such bond when approved to act as a supersedeas.

Jan. 29, 1918.

E. A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

Filed Jany. 29, 1918. W. P. Sadler, Clk., by J. H. Campbell, D. C.

60 Copy.

In the Supreme Court of Arkansas.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, Appellant,

versus

DICKSEY WILLIAMS and LUCY WILLIAMS, Appellees.

Bond.

Know all men by these presents:

That we, St. Louis, Iron Mountain and Southern Railway Company, as principal, and Gordon N. Peay and Geo. G. Worthern, as Sureties, are held and firmly bound unto Dicksey Williams and Lucy

Williams in the sum of Five Hundred ($500.00) Dollars, to be paid to them, to which payment well and truly to be made we bind ourselves jointly and severally firmly by these presents.

Signed and Sealed this 2nd day of February, 1918.

Whereas, the above named appellant seeks to prosecute its writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Arkansas.

Now, Therefore, the condition of this obligation is such that if the above named appellant shall prosecute its said writ of error to effect, and answer all costs and damages that may be adjudged, if it shall fail to make good its plea, then this obligation to be void,
61 otherwise to remain in full force and effect.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
By R. E. WILEY, *Attorney.*
GORDON N. PEAY,
GEO. G. WORTHEN,
Sureties.

Witness to signatures:
GEORGE BEATTIE.

UNITED STATES OF AMERICA, *ss:*

Gordon N. Peay and Geo. G. Worthen, being first duly sworn deposes each for himself, as follows: I am worth the sum specified as the penalty of the foregoing bond above all of my just debts and liabilities, exclusive of exemptions.

GORDON N. PEAY.
GEO. G. WORTHEN.

Subscribed and sworn to before me this the 2nd day of February, 1918.

[SEAL.] GEORGE BEATTIE,
Notary Public.

Approved Feb. 4, 1918.
E. A. McCULLOCH,
Chief Justice.

Filed Feby. 4, 1918. W. P. Sadler, Clk., by J. H. Campbell, D. C.

Writ of Error.

62 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or

some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit between the St. Louis, Iron Mountain & Southern Railway Company and Dicksey Williams and Lucy Williams, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened, to the great damage of the said St. Louis, Iron Mountain & Southern Railway Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, the 4th day of February, 1918.

[The Seal of the District Court, Western Division of East. Dist. Ark., U. S. A.]

SID B. REDDING,
Clerk of the District Court of the United States for the Western Division of the Eastern District of Arkansas,
By W. P. FEILD, JR., *D. C.*

Allowed by
A. McCULLOCH,
Chief Justice of the Supreme Court of the State of Arkansas.

Filed Feby. 4, 1918. W. P. Sadler, Clk., by J. H. Campbell, D. C.

63 SUPREME COURT,
State of Arkansas, ss:

I, W. P. Sadler, clerk of the said court, do hereby certify that there was lodged with me as such clerk on February 4, 1918, in the

matter of the St. Louis, Iron Mountain & Southern Railway Company, versus Dicksey Williams and Lucy Williams,

1. The original bond of which a copy is herein set forth.

2. Copies of the writ of error, as herein set forth,—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in Little Rock, Arkansas, this February 4, 1918.

[Seal of the Supreme Court of Arkansas.]

W. P. SADLER,
Clerk Supreme Court of Arkansas.

64 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to Dicksey Williams and Lucy Williams, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Arkansas, wherein the St. Louis, Iron Mountain and Southern Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Arkansas, Feb. 4, 1918.

E. A. McCULLOCH,
Chief Justice Supreme Court of Arkansas.

65 *Marshal's Return.*

I hereby certify that I received the within writ, being a Citation, on the 5th day of February, A. D. 1918, at Little Rock, Arkansas, and executed the same by delivering a true copy into the hands of Lucy Williams, at 11 mi. S. W. Gurdon, Arkansas, and Dicksey Williams at Gurdon, Arkansas, this the 6th day of February, A. D. 1918.

A. J. WALLS,
U. S. Marshal, Eastern District of Arkansas,
By R. J. HODGES, *Deputy.*

Marshal's Fees & Costs $13.86.

Filed Feby. 11, 1918. W. P. Sadler, Clk., by J. H. Campbell, D. C.

66 UNITED STATES OF AMERICA,
Supreme Court of Arkansas, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Arkansas, in the City of Little Rock, this February 4, 1918.

[Seal of the Supreme Court of Arkansas.]

W. P. SADLER,
Clerk Supreme Court of Arkansas.

Costs of Suit.

Costs in Circuit Court	24.65
" " Supreme Court	37.36
" Making transcript pursuant to Writ of Error	20.00

Paid by St. Louis, Iron Mountain & Southern Railway Company.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY ..... *Plaintiff in Error,*

v. No. 66.

DICKSEY WILLIAMS AND LUCY WILLIAMS ..... *Defendants in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

In July, 1915, the defendants in error, Dicksey Williams and Lucy Williams, each brought a separate action at law in the circuit court of Clark county, Arkansas, against the plaintiff in error, praying for the recovery of an overcharge in passenger fare of sixty-six cents and the statutory penalty of $300. The suits proceeded to issue on the pleadings separately, and

when called for trial were consolidated and tried together, resulting in verdicts for each of the defendants in error, on which judgment was entered in their favor each for the sum of sixty-six cents overcharge and $75 penalty. From that judgment the carrier appealed to the Supreme Court of Arkansas, where the judgment was affirmed. Writ of error was prosecuted to this court.

The question involved here is the validity of the statutory provision of the State of Arkansas contained in section 6620 of Kirby's Digest of the Statutes of Arkansas, which provides "that any common carrier that shall charge a greater compensation for transportation of passengers than provided by this Act (which is three cents a mile) shall forfeit and pay for each such offense a sum not less than fifty dollars or more than three hundred dollars, and cost of suit including a reasonable attorney's fee;" it being contended by the plaintiff in error that the provision for said forfeiture, or penalty, of three hundred dollars and attorney's fee, is in violation of section 1 of article 14 of the articles in amendment of the Constitution of the United States, in that the said penalty is arbitrary and unreasonable, and not in proportion to the actual damages sustained, and also is so severe as to deprive appellant of the right to resort to the courts to test the validity of the legislation, and is therefore uncon-

stitutional and void. This question was raised in the manner following stated:

The complaint in each instance alleges that the defendant was a railroad corporation, carrying passengers in the State of Arkansas; that the plaintiff bought a ticket for passage from Conway to Whelen Springs, in the State of Arkansas, both being stations on the defendant's railroad, and distant from each other 118 miles; that the defendant charged for the ticket $4.20, which was in excess of three cents a mile, and that three cents a mile was the maximum fare the defendant could legally charge, and that the statutes of Arkansas provided a penalty of three hundred dollars and an attorney's fee, against railroads charging more than the lawful rate, for which plaintiff prayed judgment.

The carrier answered, denying the allegations of fact in the complaint as to the overcharge, and also setting up in a separate paragraph that the Arkansas statute, which provided the penalty and attorney's fee, is unconstitutional and void, because in violation of section 1 of article 14 of the articles in amendment of the Constitution of the United States, which provides that no State shall deprive any person of property without due process of law, nor deny to any person the equal protection of the law, in that the penalty provided by the statute is arbitrary and unreasonable and

not in proportion to the actual damages sustained; and is further so severe as to deprive the carrier of the right to resort to the courts to test the validity of the legislation. Also, in a separate paragraph, alleging that the enforcement of the penalty would deprive the carrier of its property without due process of the law, and deny to it the equal protection of the law, contrary to the Constitution of the United States.

At the trial the plaintiff in error asked the court to instruct the jury that plaintiffs could not recover any penalty for the overcharge; also that the penalty provided by the statute for overcharge was unreasonable and arbitrary, and out of proportion to the damages suffered as a result of the overcharge, and therefore contrary to the Fourteenth Amendment to the Constitution of the United States. Also that the penalty provided is so severe as to deprive the carrier of the right to resort to the courts to contest the validity of the law, and therefore contrary to the Fourteenth amendment. The court refused so to charge the jury. The court instructed the jury that if the carrier charged the plaintiff more than three cents per mile the plaintiffs were entitled to recover the difference between the amount charged and the amount at three cents a mile, and in addition they were each entitled to recover a penalty of not less than fifty dollars nor more

than three hundred dollars. Plaintiff in error duly saved its exceptions to these rulings of the court.

After the trial and verdict the court also entered a separate judgment in favor of the plaintiffs for an attorney's fee of $25, to which the plaintiff in error saved its exceptions.

In due time, under the laws of Arkansas, the plaintiff in error filed its motion for a new trial, in which it made separate grounds for the same the refusal of the court to instruct the jury as requested by it, and in instructing the jury that penalty could be recovered, and in entering judgment for the penalty and for attorney's fee. This motion for new trial was overruled, and the plaintiff in error prosecuted its appeal to the Supreme Court of Arkansas, where it presented the questions as to the validity of this penalty and argued that the circuit court erred in its rulings aforesaid holding the penalty recoverable. The Supreme Court of Arkansas denied these contentions and affirmed the judgments.

Plaintiff in error thereupon filed its petition for a writ of error to this court, which was allowed by the Chief Justice of the Supreme Court of Arkansas on January 29, 1918.

With its petition for writ of error plaintiff in error filed an assignment of errors, setting up all of the rul-

ings denying its contentions as aforesaid. The following are the errors relied upon:

SPECIFICATIONS OF ERRORS.

I.

The Supreme Court of Arkansas erred in deciding that the statute, Section 6620 of Kirby's Digest, which provides a penalty for an overcharge in passenger fare, is valid and constitutional, and in refusing to hold that the statute was contrary to the Constitution of the United States.

II.

Said court erred in refusing to decide that the penalty provided by Section 6620 of Kirby's Digest is arbitrary and unreasonable, and not proportionate to the actual damages sustained, and therefore in violation of section 1 of article 14 of the articles in amendment of the Constitution of the United States, which provides that no State shall deprive any person of property without due process of law, nor deny to any person the equal protection of the law.

III.

The court erred in refusing to decide that the penalties provided by said statute are so severe as to deprive the carrier of the right to resort to the courts to

test the validity of the law, and therefore are invalid and unconstitutional.

IV.

The said court erred in affirming the action of the trial court, which denied appellant's request made to the trial court, to instruct the jury as following stated, towit: "Plaintiffs can not recover any penalty for overcharge, if you find there was any overcharge."

BRIEF OF ARGUMENT.

I. This statute takes the carrier's property without due process of law and denies to it the equal protection of the laws contrary to the Fourteenth Amendment, because the penalty is arbitrary and unreasonable and not in proportion to the actual damages sustained.

> Atlantic Coast Line Rd. Co. v. North Carolina Corporation Commission, 206 U. S. 1, 51 L. Ed. 933, at page 942.
>
> Mo. Pac. Ry. Co. v. Nebraska, 217 U. S. 196, 54 L. Ed. 727, at page 731.
>
> Mo. Pac. Ry. Co. v. Tucker, 230 U. S. 340, 57 L. Ed. 1507.
>
> Northern Pacific Rd. Co. v. North Dakota, 236 U. S. 585, 59 L. Ed. 735.
>
> Seaboard Air Line Ry. Co. v. Seegers, 207 U. S. 73, 52 L. Ed. 108.

II. The penalty of this statute is exorbitant and oppressive within the principle foregoing stated.

III. The penalty is also relatively exorbitant when considered in connection with its purpose.

> Wadley So. Ry. Co. v. Georgia, 235 U. S. 651, 59 L. Ed. 405.

St. L., I. M. & S. Ry. Co. v. Waldrop, 93 Ark. 42.

Mo. Pac. Ry. Co. v. Smith, 60 Ark. 221.

Railway v. Gill, 54 Ark. 101.

IV. The statute is violative of the Fourteenth Amendment because the penalties provided by it are so severe as to deprive the carrier of the right to resort to the courts to test its validity.

Ex Parte Young, 209 U. S. 123, 52 L. Ed. 714.

Mo. Pac. Ry. Co. v. Tucker, 230 U. S. 340, 57 L. Ed. 1507.

ARGUMENT.

I.

THIS STATUTE TAKES THE CARRIER'S PROPERTY WITHOUT DUE PROCESS OF LAW AND DENIES TO IT THE EQUAL PROTECTION OF THE LAWS, CONTRARY TO THE FOURTEENTH AMENDMENT, BECAUSE THE PENALTY IS ARBITRARY AND UNREASONABLE AND NOT IN PROPORTION TO THE ACTUAL DAMAGES SUSTAINED.

A law not otherwise in conflict with the Constitution may be unconstitutional and void on account alone of oppressive penalties, that is to say the provisions

of it which require the assessment of penalties may be void by reason alone of the penalties being oppressive under all the circumstances.

It is well settled that while the State has power to regulate carriers, and to make reasonable police regulations, these rights are nevertheless limited by the guaranties of the Fourteenth Amendment to the United States Constitution; that the alleged police regulation may be so arbitrary and oppressive as not to be really a police regulation, but to infringe the right of liberty and property. In other words, that there is a point beyond which regulation ceases to be such and becomes a taking of property without due process of law and a denial of the equal protection of the laws.

Atlantic Coast Line Rd. Co. v. North Carolina Corporation Commission, 206 U. S. 1, 51 L. Ed. 933, at page 942.

Mo. Pac. Ry. Co. v. Nebraska, 217 U. S. 196, 54 L. Ed. 727, at page 731.

Mo. Pac. Ry. Co. v. Tucker, 230 U. S. 340, 57 L. Ed. 1507.

Northern Pacific Rd. Co. v. North Dakota, 236 U. S. 585, 59 L. Ed. 735.

The principle is well stated in the opinion of this court in Mo. Pac. Ry. Co. v. Nebraska, *supra*, as follows:

"It is also true that the States have power to modify and cut down property rights to a certain limited extent without compensation, for public purposes, as a necessary incident of government—the power commonly called the police power. But railroads, after all, are property protected by the Constitution, and there are constitutional limits to what can be required of their owners under either the police power or any other ostensible justification for taking such property away" (page 731).

Mr. Justice White, in the opinion in Atlantic Coast Line Railroad Company v. North Carolina Corporation Commission, *supra*, states it clearly as follows:

"Wherever the power of regulation is exerted in such an arbitrary and unreasonable way as to cause it to be in effect not a regulation, but an infringement upon the right of ownership, such an exertion of power is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment. The result, therefore, is that the proposition relied upon is well founded if it be that the order which the court below enforced was of the arbitrary and unreasonable character asserted" (page 942).

It is on the principle of these cases that a law may be unconstitutional on account of oppressive penalties. This court has recognized that the principle is applica-

ble in a case of oppressive penalties in Seaboard Air Line Railway v. Seegers, 207 U. S. 73 (52 L. Ed. 108).

In that case appellant attacked a statute of South Carolina which provided a penalty of $50 for the failure of the carrier to adjust within forty days any claim for loss or damage to freight. The contention was that the act was unconstitutional because of unjust and discriminatory classification, and a denial of the equal protection of the laws. The court held that contention could not be sustained in that case. But it used the following language in the opinion:

"We know there are limits beyond which penalties may not go even in cases where classification is legitimate."

52 L. Ed., at page 111.

The court commented on the amount of the penalty and said: "The difference between the value of the goods shipped and the freight charges, $1.75, and the amount of the penalty, $50, naturally excites attention" (page 109). Then, after holding the classification not discriminatory the opinion goes back to the amount of the penalty again and uses the language first above quoted, but holds that under all the circumstances of the evil to be remedied by this statute while the penalty may be large as compared with the value

of the shipment, it is not so large as to be oppressive in view of the evils sought to be remedied.

But while the court held the penalties to be not so excessive as to be oppressive under all the circumstances of that case, it considered that question, and from the language above quoted and from other statements in the opinion it is evident that the court would apply the principle of the foregoing cited cases to the penalty provisions of a statute which assessed penalties so excessive as to be oppressive under all the circumstances of the case and would hold such penalties unconstitutional.

II.

THE PENALTY OF THIS STATUTE IS EXORBITANT AND OPPRESSIVE WITHIN THE PRINCIPLE FOREGOING STATED.

In the first place, the penalty is exorbitant in amount when compared to the damages sustained.

The overcharge claimed in this case is sixty-six cents and the penalty recovered, including the attorney's fee, is $100; this is 151 times the amount of the overcharge, which is all the damage suffered; of this it may be said what Mr. Justice Brewer said in his opinion in Seaboard Air Line Railway v. Seegers, *su-*

pra, "The difference between the damage suffered and the amount of this penalty naturally excites attention."

Nor is the result in this case exceptional. The minimum penalty provided by the statute is $50 and a reasonable attorney's fee; the court will take judicial notice that the minimum attorney's fee will scarcely be less than $25; also of the fact that the overcharge must in every case be small in amount; that in fact is the sole justification for any penalty whatever, viz., that the amount of the overcharge must be so insignificant in amount as to discourage the injured party from going to the expense of resorting to the courts to prosecute for overcharge. The mileage which one can make in a single trip within the State of Arkansas is limited and the greatest possible overcharge is therefore likewise limited. Alleged overcharges are uniformly very small in amount; therefore, the minimum penalty of $50, plus attorney's fee, must be many times the amount of the overcharge in any case and the maximum penalty of $300, plus the attorney's fee, will multiply that difference enormously.

III.

THE PENALTY IS ALSO RELATIVELY EXORBITANT WHEN CONSIDERED IN CONNECTION WITH ITS PURPOSE.

The penalty being absolutely exorbitant when compared to the amount of damages, if we should further find that it is also relatively exorbitant when considered in connection with the purpose of the penalty, then it becomes an oppressive penalty and therefore unconstitutional.

Pursuing the latter inquiry, it is apparent that overcharges by mistake, accident or negligence are the ones which are guarded against by the statute, and not those made by deliberate policy of the carrier. While the language of the statute is broad enough to penalize all overcharges, it is clear that the only purpose in fact served is to protect the public against overcharges made by mistake, accident or negligence, because the public is in no danger of suffering overcharges in passenger fare of any other kind. The proper and recognized method uniformly employed by carriers to test the validity of rates prescribed by statute, is not a continued or deliberate policy of violation of the statute, but a suit in equity to enjoin its enforcement. The cause of action for the amount of the overcharge alone, which would accrue to each passenger, is sufficient to

deter the carrier from a course of deliberate and continued violation of the act when it has other adequate relief.

The act has now been in force for many years in Arkansas and the amount of the rate has been changed once or twice during that time, and it is common knowledge that none of the carriers have pursued a course of wilfully or intentionally charging a rate in excess of the act at any time. At certain times during that period the carriers have by suit for injunction tested the validity of the rate prescribed. Not only is that the method uniformly followed, but it is the method which the Supreme Court of the United States requires to be followed as a condition of protection against excessive penalties.

> Wadley So. Ry. Co. v. Georgia, 235 U. S. 651, 59 L. Ed. 405.

This requirement is a further reason for the carriers not following a settled policy of violating the rate statute. And the method of contesting a rate by suit in equity to enjoin its enforcement is so uniformly as a matter of fact followed by carriers everywhere that under all the circumstances this court will consider that the only purpose actually served by the penalty in the statute in question here is to protect the public against negligent, accidental and erroneous over-

charges. This the penalty accomplishes by insuring the person overcharged against loss and expense in prosecuting claim for the overcharge notwithstanding it may be very small in amount. The Supreme Court of Arkansas has recognized this purpose of the penalty by applying it in cases of mistake where there was no intention to overcharge. If an agent inadventently makes an erroneous calculation which results in charging for a ticket more than the lawful fare the penalty is recoverable, notwithstanding the agent thought he was charging the right amount. If an agent accidentally misreads the figures in his rate book, or if he inadvertently looks at the wrong station named in his book and thereby charges an amount which applies to the next station beyond the one the passenger asks to go, or if the agent by mistake looks in the wrong column of extensions and thereby gets an amount in excess of the right fare and charges the passenger that amount, the carrier is charged with this penalty, notwithstanding the agent has merely made an honest mistake and has been guilty of nothing more than negligence.

St. L., I. M. & S. Ry. Co. v. Waldrop, 93 Ark. 42.

A statute which as applied, systematically and habitually results in charging one for ordinary negligence

with from 100 to 1,000 or more times the amount of the actual damage occasioned by the negligence, is unreasonable and oppressive within the meaning of the authorities above cited.

It is likewise oppressive when applied to cases of even wilful negligence. There can not be a case of overcharge which in itself involves wanton or oppressive disregard of the passenger's rights which would not be amply compensated by the charging of a smaller penalty than allowed by this act. An overcharge, even in its worst aspect, is merely a wilful taking of the excess fare without right, and wantonness, which means nothing more than wilful disregard of the rights of others, could add nothing to the damages.

There is, therefore, no reason for any greater penalty for a wanton or wilful overcharge than for one by mere ordinary negligence. If the overcharge is accompanied by either wanton or wilful misconduct on the part of the agent collecting it, that would amount to a separate cause of action accruing to the passenger additional to the action for overcharge for which he could recover his damages even to the extent in a proper case of punitive damages. But this is regardless of the overcharge.

The severity of and oppressiveness of this penalty is further illustrated by the fact that it accrues, not-

withstanding the overcharge be paid by the passenger with the sole and only intent on his part to collect the penalty. Even though he boards a train with the intent and purpose to pay an overcharge and collect the penalty and without any *bona fide* desire or purpose to go to the point to which he pays fare, he may nevertheless collect this penalty if the carrier's conductor by some error or negligence accepts an overcharge from him.

Mo. Pac. Ry. Co. v. Smith, 60 Ark. 221.

Railway v. Gill, 54 Ark. 101.

It is obvious that the carrier would be as surely deterred from negligent, and even wilfully negligent overcharges by a smaller penalty, as for instance double the amount of damages plus a reasonable attorney's fee, as it would be by this excessive penalty. The smaller penalty would prevent as many instances of overcharge. Because the carrier having adopted the rate either voluntarily or by force of necessary submission to the statute, will take care to see that only that rate is charged if any penalty at all attaches to a failure to observe the rate in a particular case. In event of a penalty of any amount above the actual damages no overcharges will occur except those negligent and inadvertent ones which are inseparable from the conduct of business by numerous agents involving so

many transactions in the daily conduct of transportation.

IV.

THE STATUTE IS VIOLATIVE OF THE FOURTEENTH AMENDMENT BECAUSE THE PENALTIES PROVIDED BY IT ARE SO SEVERE AS TO DEPRIVE THE CARRIER OF THE RIGHT TO RESORT TO THE COURTS TO TEST ITS VALIDITY.

We have argued that the only proper purpose to be served by this penalty is to protect the public against accidental and erroneous and negligent overcharges. While this is its only proper purpose as we view it, the language of the act is sufficient to embrace all overcharges; and it is the legal intent of this statute as construed by the Supreme Court of Arkansas, in this case, to absolutely prohibit overcharges and to enforce this penalty against every single overcharge for the purpose of enforcing the carrier's submission as a settled policy to the rate prescribed by the statute.

In this view of the statute this penalty is also objectionable and unconstitutional because it is so severe as to deprive the carrier of the right to resort to the courts to test the validity of the law.

The amount of the rate as above stated has been from time to time changed, but the penalty for charg-

ing more than the rate prescribed has remained. The carrier is guaranteed by the Constitution the right to resort to the courts to test the validity of the rate. This is now well settled. "If a law in plain terms makes the decision of the Legislature conclusive as to sufficiency of the rates, then in accordance with a long line of decisions the law is unconstitutional. Likewise a law which indirectly accomplishes that result by imposing such conditions upon the right to appeal for judicial relief as works an abandonment of the right rather than face the conditions upon which it is offered or may be obtained, is also unconstitutional. Therefore, if penalties for disobedience are by fines so enormous or by imprisonment so severe as to intimidate the company from resorting to the courts, it is the same as if the law in terms prohibited the company from resorting to the courts."

The above is a quotation from the opinion of the Supreme Court of the United States in *Ex parte* Young, 209 U. S. 123, 52 L. Ed. 714, which is the leading case on that point.

A case which involved a statute very similar to the one we are considering, was

Mo. P. Ry. Co. v. Tucker, 230 U. S. 340; 57 L. Ed. 1507,

where a statute of Kansas, which prescribed the maximum rates for the transportation of oil and a penalty of $500 for each instance of overcharge, was passed on. The court quoted the language above from the opinion in *Ex parte* Young, and applied it in that case, holding the law unconstitutional. In the opinion the court used the following language:

"As applied to cases like the present, the imposition of $500 as liquidated damages is not only grossly out of proportion to the possible actual damages, but is so arbitrary and oppressive that its enforcement would be nothing short of the taking of property without due process of law" (page 1511).

In that case the actual amount of overcharge was $3.02. The amount of the penalty in that case was just about as many times larger than the damages as in the case at bar.

We respectfully ask that the court declare the provision for the penalties in this statute contrary to the Fourteenth Amendment to the Constitution of the United States, and that this action be reversed and dismissed.

Respectfully submitted,

EDWARD J. WHITE,

EDGAR B. KINSWORTHY,

ROBERT E. WILEY,

Attorneys for Plaintiff in Error.

Dated Little Rock, Arkansas, September 20, 1919.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY *v.* WILLIAMS ET AL.

ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

No. 66. Argued November 11, 1919.—Decided December 8, 1919.

A railroad company in defense of an action for penalties imposed for exceeding passenger rates prescribed by a state law has no ground to claim that the penalties are unconstitutional in that, by their severity, they prevent resort to the courts to test the adequacy of the rates, when it did not avail itself of its opportunity to have such a test in a suit against the state railroad commission pending which the penalty provision could have been suspended by injunction, and when it did not question the prescribed rates in the action to collect the penalties. P. 65.

A provision for the collection of such penalties in an action by the aggrieved passenger and for his use irrespective of his private damages, is consistent with due process of law. P. 66.

In determining whether such penalties are so severe, oppressive, and unreasonable as to violate the due process clause, they should be tested not by comparison with the overcharges in particular instances but by the public interest in having the rates adhered to uniformly and the relation of the penalties to that object. *Id.*

131 Arkansas, 442, affirmed.

THE case is stated in the opinion.

Mr. Robert E. Wiley, with whom *Mr. Edward J. White* and *Mr. Edgar B. Kinsworthy* were on the brief, for plaintiff in error.

No appearance for defendants in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

By a statute of Arkansas, regulating rates for the transportation of passengers between points within the State,

any railroad company that demands or collects a greater compensation than the statute prescribes is subjected "for every such offense" to a penalty of "not less than fifty dollars, nor more than three hundred dollars and costs of suit, including a reasonable attorney's fee," and the aggrieved passenger is given a right to recover the same in a civil action. Act April 4, 1887, Laws 1887, p. 227; Kirby's Digest, 1904, § 6620; Act March 4, 1915, Laws 1915, p. 365; Kirby & Castle's Digest, 1916, § 8094.

In June, 1915, a company operating a line of railroad within the State demanded and collected sixty-six cents more than the prescribed fare from each of two sisters carried over part of its line when returning to their home from a school commencement elsewhere in the State; and in suits separately brought for the purpose, and afterwards consolidated, these passengers obtained judgments against the company for the overcharge, a penalty of seventy-five dollars and costs of suit, including an attorney's fee of twenty-five dollars. The company appealed, asserting that the provision for the penalty was repugnant to the due process of law clause of the Fourteenth Amendment; but the Supreme Court of the State sustained the provision and affirmed the judgments. 131 Arkansas, 442. To obtain a review of that decision the company prosecutes this writ of error.

The grounds upon which the provision is said to contravene due process of law are, first, that the penalty is "so severe as to deprive the carrier of the right to resort to the courts to test the validity" of the rate prescribed, and, second, that the penalty is "arbitrary and unreasonable, and not proportionate to the actual damages sustained."

It is true that the imposition of severe penalties as a means of enforcing a rate, such as was prescribed in this instance, is in contravention of due process of law, where no adequate opportunity is afforded the carrier for safely testing, in an appropriate judicial proceeding, the validity

of the rate—that is, whether it is confiscatory or otherwise—before any liability for the penalties attaches. The reasons why this is so are set forth fully and plainly in several recent decisions and need not be repeated now. *Ex parte Young*, 209 U. S. 123, 147; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 53; *Missouri Pacific Ry. Co.* v. *Nebraska*, 217 U. S. 196, 207–208; *Missouri Pacific Ry. Co.* v. *Tucker*, 230 U. S. 340; *Wadley Southern Ry. Co.* v. *Georgia*, 235 U. S. 651, 659, *et seq.*

And it also is true that where such an opportunity is afforded and the rate is adjudged valid, or the carrier fails to avail itself of the opportunity, it then is admissible, so far as due process of law is concerned, for the State to enforce adherence to the rate by imposing substantial penalties for deviations from it. *Wadley Southern Ry. Co.* v. *Georgia*, *supra*, p. 667, *et seq.*; *Gulf, Colorado & Santa Fe Ry. Co.* v. *Texas*, 246 U. S. 58, 62.

Here it does not appear that the carrier had not been afforded an adequate opportunity for safely testing the validity of the rate, or that its deviation therefrom proceeded from any belief that the rate was invalid. On the contrary, it is practically conceded—and we judicially know—that if the carrier really regarded the rate as confiscatory, the way was open to secure a determination of that question by a suit in equity against the Railroad Commission of the State, during the pendency of which the operation of the penalty provision could have been suspended by injunction. *Wadley Southern Ry. Co.* v. *Georgia*, *supra*. See also *Allen* v. *St. Louis, Iron Mountain & Southern Ry. Co.*, 230 U. S. 553; *Rowland* v. *St. Louis & San Francisco R. R. Co.*, 244 U. S. 106; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *McKnight*, *ibid.* 368. And the record shows that at the trial the carrier not only did not raise any question about the correct fare, but proposed and secured an instruction to the jury wherein the prescribed rate was recognized as controlling.

It therefore is plain that the first branch of the company's contention cannot prevail.

The second branch is more strongly urged, and we now turn to it. The provision assailed is essentially penal, because primarily intended to punish the carrier for taking more than the prescribed rate. *Railway Co.* v. *Gill*, 54 Arkansas, 101, 106; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Waldrop*, 93 Arkansas, 42, 45. True, the penalty goes to the aggrieved passenger and not the State, and is to be enforced by a private and not a public suit. But this is not contrary to due process of law; for, as is said in *Missouri Pacific Ry. Co.* v. *Humes*, 115 U. S. 512, 523, "the power of the State to impose fines and penalties for a violation of its statutory requirements is coeval with government; and the mode in which they shall be enforced, whether at the suit of a private party, or at the suit of the public, and what disposition shall be made of the amounts collected, are merely matters of legislative discretion." Nor does giving the penalty to the aggrieved passenger require that it be confined or proportioned to his loss or damages; for, as it is imposed as a punishment for the violation of a public law, the legislature may adjust its amount to the public wrong rather than the private injury, just as if it were going to the State. See *Marvin* v. *Trout*, 199 U. S. 212, 225.

The ultimate question is whether a penalty of not less than fifty dollars and not more than three hundred dollars for the offense in question can be said to bring the provision prescribing it into conflict with the due process of law clause of the Fourteenth Amendment.

That this clause places a limitation upon the power of the States to prescribe penalties for violations of their laws has been fully recognized, but always with the express or tacit qualification that the States still possess a wide latitude of discretion in the matter and that their enactments transcend the limitation only where the penalty

prescribed is so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable. *Coffey* v. *Harlan County*, 204 U. S. 659, 662; *Seaboard Air Line Ry.* v. *Seegers*, 207 U. S. 73, 78; *Waters-Pierce Oil Co.* v. *Texas*, 212 U. S. 86, 111; *Collins* v. *Johnston*, 237 U. S. 502, 510.

Of this penalty and the need for it the Supreme Court of the State says: "It is commonly known that carriers are not prone to adhere uniformly to rates lawfully prescribed and it is necessary that deviation from such rates be discouraged and prohibited by adequate liabilities and penalties, and we regard the penalties prescribed as no more than reasonable and adequate to accomplish the purpose of the law and remedy the evil intended to be reached." *Chicago, Rock Island & Pacific Ry. Co.* v. *Davis*, 114 Arkansas, 519, 525.

When the penalty is contrasted with the overcharge possible in any instance it of course seems large, but, as we have said, its validity is not to be tested in that way. When it is considered with due regard for the interests of the public, the numberless opportunities for committing the offense, and the need for securing uniform adherence to established passenger rates, we think it properly cannot be said to be so severe and oppressive as to be wholly disproportioned to the offense or obviously unreasonable.

Judgment affirmed.

MR. JUSTICE MCREYNOLDS dissents.